

## RECIPROCAL TRADE AND INVESTMENT ACT OF 1983

SEPTEMBER 27, 1983.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means,  
submitted the following

### REPORT

[To accompany H.R. 1571 which on February 22, 1983, was referred jointly to the Committee on Ways and Means, the Committee on Foreign Affairs, and the Committee on Energy and Commerce]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1571) to insure the continued expansion of reciprocal market opportunities in trade, trade in services, and investment for the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 7, line 8 and 11, insert a quotation mark at the beginning of each line.

Page 8, line 2, strike out "thrity" and insert "thirty".

Page 8, line 24, strike out "Unted" and insert "United".

Page 10, line 6, strike out "United States." and insert "United States, and includes any such act which denies the protection of intellectual property rights."

Page 15, line 14, strike out the comma,

Page 15, line 18, strike out "(6)" and insert "(9)".

Page 15, line 20, strike out "(7)" and insert "(10)".

Page 15, line 24, strike out "(8)" and insert "(11)".

Page 21, line 21, strike out "AMENDMANTS" and insert "AMENDMENTS".

Page 28, after line 12 insert the following:

#### SEC. 7. LIMITED NEGOTIATING AUTHORITY.

(a) Whenever—

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(1) the President determines that any existing duty or other import restriction of any foreign country or the United States is unduly burdening and restricting the foreign trade of the United States and that the purposes of this Act will be promoted thereby; or

(2) any action (other than an action under section 203 of the Trade Act of 1974) has been taken to increase or impose any duty or other import restriction that requires the granting of new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions;

the President may enter into trade agreements with foreign countries or instrumentalities thereof, providing for such modification or continuance of any existing duty, such continuance of existing duty-free treatment, or such additional duties as he determines to be required or appropriate to carry out any such trade agreement.

(b) Trade agreements entered into under subsection (a) in any 1-year period may not provide for the reduction of duties, or the continuance of duty-free treatment for articles which account for more than 2 percent of the value of United States imports for the most recent 12-month period for which import statistics are available.

(c) The authority under this section may not be exercised—

(1) with respect to articles that are designated by the President as import sensitive, or

(2) with respect to negotiations that have not been subject to the prerequisites of chapter 3 of title I of the Trade Act of 1974.

(d) Trade agreements may be entered into under subsection (a) only during the 3-year period beginning on the date of the enactment of this Act.

(e) A trade agreement entered into under subsection (a) shall not enter into force with respect to United States unless the provisions of sections 102 (d) and (e) and 151 of the Trade Act of 1974 are complied with.

(f)(1) Section 102(d) is amended by inserting after "international trade," the following "or a trade agreement entered into under section 7(a) of the Reciprocal Trade and Investment Act of 1983."

(2) Section 151(b)(1) is amended by inserting "entered into under section 102 of this act or section 7(a) of the Reciprocal Trade and Investment Act of 1983 and" immediately after "one or more trade agreements".

#### BACKGROUND AND PURPOSE

The basic purposes of H.R. 1571, as amended, are to provide Congressional authority and direction on negotiation of trade agreements to reduce or eliminate barriers to U.S. trade, to provide for continual identification and assessment of such barriers, and to improve existing U.S. authority and procedures for responding to foreign trade practices which violate trade agreements or otherwise burden or restrict U.S. commerce.

Reciprocity is the cornerstone of the international trading system. H.R. 1571 seeks to strengthen the tools necessary for the United States to achieve fairness and equity in the practices of for-

eign countries affecting our trade as well as improvement and expansion of the GATT framework to areas not currently covered adequately by international trading rules. U.S. rights under trade agreements should be vigorously enforced and appropriate action taken in response to other foreign practices which are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. H.R. 1571 strengthens the authority and procedures under the Trade Act of 1974 for that purpose. At the same time, the Committee believes that achievement of reciprocity in market access must be consistent with U.S. international obligations under the General Agreement on Tariffs and Trade (GATT) and other agreements and should focus primarily on multilateral solutions to trade issues.

With respect to negotiating objectives, the bill places particular emphasis on the need for international trade agreements to reduce or eliminate barriers or other distortions to trade in services, foreign direct investment, and high technology products. These three areas are of crucial and growing importance to our economy and balance of payments.

Services and high technology products are also areas in which the United States is facing growing international competition and increasing forms of foreign government intervention restricting U.S. market access. These three areas are also subject to minimal internationally-agreed trading rules and disciplines. H.R. 1571 is intended to provide a clear Congressional mandate to strengthen the ability of the President to obtain trade agreements with respect to nontariff barriers in these and other areas. The bill also provides general authority for further tariff agreements, subject to Congressional implementation.

## SUMMARY OF H.R. 1571, AS AMENDED, RECIPROCAL TRADE AND INVESTMENT ACT OF 1983

### SECTION 1: SHORT TITLE; AMENDMENT OF TRADE ACT OF 1974

Section 1 cites the short title of the bill and states that amendments or repeals in the bill refer to provisions of the Trade Act of 1974.

### SECTION 2: STATEMENT OF PURPOSES

Section 2 states the three general purposes of H.R. 1571.

### SECTION 3: ANALYSIS OF FOREIGN TRADE BARRIERS AND UNITED STATES COMPETITIVENESS

Section 3 amends Title I of the Trade Act of 1974 to include requirements for reports to the Congress:

#### *1. Report on trade barriers*

Requires an annual report from the U.S. Trade Representative (USTR) to the House Committee on Ways and Means and the Senate Committee on Finance on trade barriers to U.S. exports including (1) a comprehensive inventory of foreign barriers to U.S. goods or services or trade-related direct investment; and (2) a quantitative or qualitative assessment of the principal foreign restric-

tions, including the extent international agreements apply and any government actions have been taken to eliminate or reduce them.

## *2. Report on competitiveness*

Requires a report from the USTR to the Congress on factors not addressed elsewhere in H.R. 1571 which significantly affect the competitiveness of U.S. high technology industries in the world markets.

### SECTION 4: AMENDMENTS TO TITLE III OF THE TRADE ACT OF 1974

Section 4 contains various amendments to Title III of the Trade Act of 1974 containing procedures and authority for the President to enforce U.S. rights under trade agreements and respond to foreign trade practices (so-called section 301 authority):

#### *1. Presidential action*

Adds requirements that the President (a) take U.S. trade agreement obligations and the impact on the national economy into account; and (b) conduct a biennial review of actions taken and rescind them if the foreign offending act is eliminated or continuation of section 301 action is not in the national interest.

#### *2. Authority on services*

Clarifies Presidential authority to restrict terms and conditions or to deny issuance of licenses or other authorizations allowing foreign service suppliers access to the U.S. market. Such authority would apply on a prospective basis.

#### *3. Definitions*

(a) Defines "commerce" to include trade-related U.S. foreign direct investment; (b) defines "discriminatory" to include denial of national or most-favored-nation treatment of goods, services, or investment; and (c) defines "unjustifiable" as violations of, or inconsistencies with, U.S. international legal rights, including denial of intellectual property right protection.

#### *4. Review of petitions; initiation of investigations*

Amends various time limits under existing law for initiation of investigations and recommendations to the President by the USTR. Provides authority for the USTR to self-initiate investigations.

### SECTION 5: NEGOTIATING OBJECTIVES

Section 5 contains a general Congressional mandate that the United States (1) seek negotiations or consultations to reduce or eliminate barriers denying U.S. foreign market access; and (2) seek review under the General Agreement on Tariffs and Trade of existing trade agreements and a work program on remaining trade barriers.

Section 5 also sets forth specific principal negotiating objectives under the Trade Act of 1974 nontariff barrier negotiating authority for trade in services, foreign direct investment, and high technology products.

## SECTION 6: PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES

Section 6 contains specific provisions to promote competitiveness and trade of U.S. service industries:

### *1. Coordination of United States policies*

Explicitly provides USTR the authority to develop and coordinate U.S. services trade policy with input and support from other Federal agencies.

### *2. Services industries development program*

Requires the Secretary of Commerce to establish a program of information collection and analysis of services to promote industry competitiveness and trade.

### *3. Coordination with States*

Establishes Congressional policy that the President consult with State governments on services trade policy and negotiating objectives and establish intergovernmental trade policy advisory committees.

## SECTION: 7 LIMITED NEGOTIATING AUTHORITY

Section 7 authorizes the President to enter into trade agreements during the 3-year period following enactment, providing for reductions, continuation, or increases in U.S. duties or continuation of existing duty-free treatment. Trade agreements and any modifications in U.S. duties are subject to Congressional approval of implementing legislation under expedited procedures.

## COMMITTEE ACTION

The Subcommittee on Trade held extensive hearings in May and July of 1982 on similar reciprocity legislation and bills specifically concerning trade in services and high technology products introduced in the 97th Congress. The Subcommittee also received extensive written comments on H.R. 4761, introduced in the 97th Congress to provide the President limited tariff negotiating authority. Consequently, the Subcommittee invited written comments on H.R. 1571 in a press release issued on August 5, 1983, in lieu of further hearings.

Administration, Congressional, and private sector testimony and written comments from business associations and individual companies support H.R. 1571. The AFL-CIO and the U.S. Council for an Open World Economy oppose the bill.

H.R. 1571, as introduced, reflected preliminary decisions of the Subcommittee in markup session last year on a similar bill, H.R. 6773. In markup session on September 15, 1983, the Subcommittee ordered H.R. 1571 favorably reported to the full Committee on Ways and Means by voice vote with two amendments.

On September 20, the Committee on Ways and Means ordered H.R. 1571 favorably reported by voice vote with amendments.

## SECTION-BY-SECTION ANALYSIS AND JUSTIFICATION, INCLUDING COMPARISON WITH PRESENT LAW

### SECTION 1. SHORT TITLE; AMENDMENTS OF THE TRADE ACT OF 1974

Section 1 contains the short title of H.R. 1571, the "Reciprocal Trade and Investment Act of 1983," and a statement that any amendment or repeal in the Act of a section or other provision is considered to be a reference to a section or provision of the Trade Act of 1974, unless otherwise expressly provided.

### SECTION 2. STATEMENT OF PURPOSES

Section 2 contains the three general purposes of H.R. 1571: (1) to foster U.S. economic growth and full employment through achieving open, fair, and equitable access to foreign markets for U.S. exports; (2) to improve the President's ability to identify, analyze, and achieve the elimination of barriers to, and restrictions on, U.S. trade and investment; and (3) to encourage further expansion of international trade (including trade in services) and to enhance the flow of foreign direct investment with implications for trade in goods and services through the negotiation of trade agreements which reduce or eliminate barriers or other trade-distorting measures.

### SECTION 3. ANALYSIS OF FOREIGN TRADE BARRIERS AND UNITED STATES COMPETITIVENESS

Section 3 of H.R. 1571 adds a new section 164 to the Trade Act of 1974 requiring the USTR to compile, maintain, and report annually to Congress a comprehensive inventory of foreign barriers to U.S. exports and an assessment of the principal barriers. Section 3 also requires a report on factors not otherwise addressed in the bill which significantly affect the competitiveness of high technology industries with potential for high sales growth in world markets.

#### *Report on foreign trade barriers*

Under present law there is no specific requirement that the Executive branch develop and maintain an inventory and analysis of trade barriers or distortions affecting U.S. commerce. Section 163 of the Trade Act requires an annual report on the trade agreements program, including information regarding nontariff barriers or other distortions and any efforts taken to obtain their removal, but these reports do not contain a comprehensive inventory or even a summary of all foreign trade restrictions or an assessment of their impact. Section 3 would specifically require for the first time development and maintenance on a current basis of an all-inclusive informational base from which the President can establish priorities for negotiations or initiate other action to enforce U.S. rights under trade agreements and to promote market access.

Section 3(a) sets forth specific requirements for the new section 164 reports. The USTR must submit a two-part report to the House Committee on Ways and Means and the Senate Committee on Finance—the two main committees with legislative jurisdiction and oversight responsibility over trade agreements and U.S. trade

law—within 12 months of enactment of this bill, to be revised and updated on an annual basis thereafter. The first part of the report must contain a comprehensive inventory of acts, policies, or practices which constitute barriers to, or distortions of, U.S. exports of goods or services or of U.S. foreign direct investment with implications for trade in goods or services. The inventory shall include, but need not be limited to, a description of each barrier and of its operation in the particular country, an identification of the goods, services or investment affected, and a description of the legal basis for the restriction in the particular country.

The second part of the report would be a quantitative or qualitative assessment, whichever is appropriate, of each of the principal acts, policies, or practices included in the inventory that restrict market access for U.S. commerce. This assessment must include, but need not be limited to, an explanation of (1) the extent to which each such restriction is subject to international agreements to which the United States is a party; (2) any action being taken to eliminate or reduce the restriction (including negotiations or action under section 301 of the Trade Act of 1974); and (3) any applicable advice given by advisory committees under section 135 of the Trade Act.

New section 164(b) also provides for development and coordination of the report and subsequent revisions and updates by USTR through the interagency trade organization established by section 242(a) of the Trade Expansion Act of 1962. Further, each department or agency of the Executive branch and independent agencies shall cooperate in preparation of the report by providing data, reports, and other necessary information to the USTR or the appropriate agency upon request. Agencies may also detail such personnel or furnish such services, without reimbursement, as USTR may request for this purpose. This provision is intended to make clear that the bill does not reorganize existing agency functions.

The USTR should request only that information which is reasonably available to the particular agency. The provision is not intended to be a general grant of authority to require such agencies to gather information. The information may be requested and used to the extent not otherwise inconsistent with law. This specific limitation is intended to make clear that information such as that obtained by the Internal Revenue Service is not within the scope of that which could be requested by or released to the USTR. The requirement for agencies to furnish information to USTR or to the "appropriate agency" is intended only to maintain existing inter-agency reporting relationships and is not intended to impair the ultimate transmission of information to the USTR.

The Committee intends that the inventory be developed on a country-by-country basis; however, the Committee recognizes that the level of detail depends upon the resources available and the judgment of USTR. For example, the report should not include the entire tariff schedules of each country, but it should contain a general description of that country's tariff system and an identification of those goods to which tariffs present a barrier. However, the Committee does not want the inventory itself (as opposed to the assessment) to reflect subjective judgments as to the importance of particular barriers. Inclusion of the word "comprehensive" is in-

tended to require an extensive inventory, regardless of whether or not USTR views some of the barriers contained therein to be significant for U.S. commerce overall. Often a particular foreign regulation or law may be extremely troublesome to an individual company, a small group of firms, or an industry without being significant to U.S. exports overall.

As previously explained, H.R. 1571 also requires a quantitative or qualitative assessment, whichever is appropriate, of each of the principal barriers identified in the inventory. It is not the Committee's intention that this assessment prejudice any investigations under Title III of the Trade Act of 1974 and the assessment by USTR of any particular barrier would not constitute a formal determination under any U.S. law. However, the Committee believes it is important to have an analysis of the more important restrictions to U.S. commerce. The purpose of the limitation to "principal" barriers is to focus greater attention and resources on assessing those barriers with the largest overall impact on United States exports and investments. The flexibility of providing a quantitative or qualitative assessment, whichever is appropriate, recognizes that the nature and operation of many nontariff barriers or trade distortions do not lend themselves to arithmetic estimates of their impact, unlike tariffs, for example.

#### *Report on high technology competitiveness*

Section 3(b) requires a one-time report by USTR to the Congress within 12 months of enactment of H.R. 1571 of factors not addressed elsewhere in the bill (particularly in the report required under subsection (a)) affecting the competitiveness of high technology industries with potential for high sales growth in world markets. This report would address such factors as U.S. and foreign macroeconomic and regulatory policies which affect high technology producers and the structure of markets which supply or distribute the products of these industries.

The purpose of the report is to analyze the increasingly complex system of government policies worldwide that affect international commerce in high technology products. Such policies include targeting of particular industries, government sanctioned cartels, tax or regulatory policies, research and development policies, and investment restrictions. The Committee believes a study of these factors would be useful and appropriate given the growing importance of high technology trade to U.S. commerce, increasing foreign government intervention and competition in high technology production and trade, and the importance this Committee attaches to further negotiations and the development of a more comprehensive trade policy in this area. Since such an examination should include subject matter and input from a number of Executive branch and independent agencies, the Committee believes the USTR is the most appropriate agency to be responsible for its formulation and coordination.

SECTION 4. AMENDMENTS TO TITLE III OF THE TRADE ACT OF 1974  
(SECTION 301)

Section 4 of H.R. 1571 contains several amendments to Title III of the Trade Act of 1974, the so-called section 301 authority. Section 301 is the principal statutory authority for the President to enforce U.S. rights under trade agreements and to respond to certain foreign practices which constitute unjustifiable, unreasonable, or discriminatory burdens or restrictions to U.S. commerce. With respect to cases involving trade agreements, section 301 constitutes the counterpart authority and procedure under domestic law to the dispute settlement process under the GATT.

Section 4 clarifies the scope of Presidential authority to take actions under section 301, including the addition of definitions of terms under existing law. Section 4 also contains several important amendments to section 301 procedures, including the addition of authority for USTR to self-initiate cases, the revision of procedural time limits on section 301 cases, and the protection of confidential business information. The Committee believes that these changes will clarify, strengthen, and otherwise improve section 301, thereby allowing more vigorous use of the statute against a wide variety of foreign restrictions and making it a more effective device to obtain fair and equitable market access for exports of U.S. goods and services.

*Presidential determinations and action*

Section 301(a) of existing law requires the President, if he determines that action by the United States is appropriate, to take all appropriate and feasible action within his power to enforce U.S. rights under a trade agreement or to obtain the elimination of a foreign act, policy, or practice that is inconsistent with any trade agreement or unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce. Section 301(b) provides additional specific retaliatory authority which allows the President to deny the foreign country involved the benefits it would otherwise receive under any trade agreement and to impose duties or other import restrictions on products, and fees or restrictions on services, of the country for such time he determines appropriate. Section 4(a) of H.R. 1571 amends section 301 in the following four respects, largely to clarify the statute's application.

Paragraph (2) of subsection (a) amends section 301(b)(2), which authorizes the President to impose duties or restrictions on the products of foreign countries, by substituting the term "goods" for "products." The use of the word "product" in current law has raised questions as to whether its scope is limited to articles which have undergone some manufacturing or production process. Substituting the term "goods" simply clarifies the President's authority to retaliate against any article.

Paragraph (3) of subsection (a) adds a new section 301(c) to specify various conditions and limitations regarding Presidential action. Under current law (section 301(a)) the President is permitted to take action either on a nondiscriminatory (most-favored-nation) basis or solely against the foreign country involved. The bill would

retain this provision and would add four further conditions and limitations.

First, the President would be expressly permitted to take action without regard to whether or not such action is related to the subject matter of the foreign act, policy, or practice. The purpose of this provision is to permit flexibility in the type of retaliation by allowing the President to impose a restriction on imports of an article or a service of a foreign country different from the U.S. goods or services affected by that country's restriction. This amendment is not intended to confer new retaliatory authority, but to clarify existing law. However, it is believed that such clarification will encourage the President to consider a wider range of appropriate responses and to adopt the response which he consider most effective in any given situation.

Second, the President would be required to take into account U.S. obligations under any applicable trade agreement before taking any action. This provision would codify existing practice.

Third, the President would be required to take into account the impact of section 301 action on the national economy. This provision clarifies his implicit powers under current law, and is intended to assure that retaliatory action would not have an adverse effect on domestic commerce which might outweigh its usefulness.

Fourth, the President would be required to review on at least a biennial basis any action taken under section 301 in order to determine its effectiveness and whether its continuation serves the national interest. The President would then be required to rescind any action within 30 days after the foreign act, policy, or practice is eliminated or a determination is made that continuation of action is not in the national interest. The purpose of this procedure is to ensure that retaliatory actions are only maintained if they serve the national interest and are still deemed helpful in obtaining removal of the foreign barrier. Obviously, continued retaliation would be inappropriate if the foreign government has eliminated the offending measure. Existing law does not contain an explicit requirement to review or to revoke retaliatory actions.

Paragraph (3) of subsection (a) also amends section 301 by adding a new subsection (d) elaborating the President's authority to restrict the services of foreign suppliers. This subsection would permit the President to restrict the terms or conditions, or to deny the issuance, of any license, permit, order, or other authorization under Federal law that allows a foreign service industry access to the U.S. market. This authority would apply only prospectively with respect to applications pending or licenses or other authorizations granted on or after the date a petition is filed under section 302(a) or the USTR self-initiates an investigation under section 302(d) as added by this bill. The President would be required to consult with the appropriate regulatory agency before taking action under new section 301(d).

New subsection (d) clarifies and makes explicit the scope of Presidential authority in the services area solely in the context of section 301 cases. The amendment would not confer any general powers to the President beyond existing law to regulate a particular services sector. Moreover, the amendment would not affect the basic jurisdiction of independent regulatory agencies responsible

for licensing or otherwise regulating foreign services generally or in section 301 cases. However, it does clarify Congressional intent that the President has authority in the specific circumstances applicable under section 301 to override or nullify a regulatory ruling for the purpose of imposing a section 301 remedy. The purpose of the amendment is to eliminate the possibility that a restriction on services imposed by the President in an area regulated by an independent agency might be subject to judicial challenge. In so doing, the amendment provides greater flexibility for the President to respond to foreign barriers to U.S. services.

Paragraph (4) of subsection (a) adds or revises definitions of various terms used in section 301. First, it broadens the definition of "commerce," beyond goods and services, to also include foreign direct investment by U.S. persons with implications for trade in goods or services. The Committee believes it is important to clarify the application of section 301 against foreign direct investment policies which constitute significant barriers to market access. The term "with implications for trade in goods or services" is intended to encompass any investment restrictions which directly or indirectly restrain or distort trade, rather than just the so-called "trade related" restrictions such as local content or export requirements. However, such authority would not encompass investment policies without any trade implications, such as non-trade-distorting expropriations.

Second, paragraph (4) adds a definition of the term "services" to include any services associated with international trade, whether or not related to trade in goods. The Committee believes that section 301 authority should apply to the broad range of services given the importance of exports by service firms to the national economy.

Finally, paragraph 4 defines the terms "unjustifiable" and "discriminatory" which are contained in section 301(a)(2)(B) of existing law in order to clarify and remove any inconsistencies in the legislative history as to their meaning. The term "unjustifiable" is defined to mean any act, policy, or practice which violates or is inconsistent with the international legal rights of the United States. This definition conforms with existing practice and legislative history, and is not intended to expand the category of unjustifiable actions against which retaliatory action can be taken.

The Committee amended H.R. 1571 as introduced to cite denial of protection of intellectual property rights as one specific type of unjustifiable measure. The Committee believes it is important to address the growing worldwide problem of intellectual property right protection on a general basis as the Congress did with respect to Caribbean Basin countries under the Caribbean Basin Initiative enacted earlier this year.

The term "discriminatory" is defined to include, if appropriate, any foreign act, policy, or practice which denies national or most-favored-nation (MFN) treatment to United States goods, services, or investment. The phrase "if appropriate" is included in the definition with a view to situations where a denial of national or MFN treatment might be sanctioned by international agreement (such as in the case of a GATT-compatible customs union) and thus would not be an appropriate basis for action.

The main purpose of these clarifying definitions is to provide greater guidance to USTR and private petitioners in the preparation and conduct of section 301 cases. The Committee believes the definitions will facilitate administration of the statute without causing a substantive change in its scope. The bill does not add a definition for the word "unreasonable" because this is a broad term referring to any foreign action which, although not illegal, nevertheless nullifies or impairs benefits accruing to the United States, or otherwise unfairly burdens U.S. commerce. The Committee believes it is more appropriate to leave this term broad, thereby allowing flexibility, and to avoid a definition which might be interpreted as attaching priority to particular types of acts or practices.

*Review of petitions; initiation of investigations*

Section 4(b) contains three amendments of section 302 of the Trade Act revising procedures and time limits for review of petitions and initiation of investigations. First, it revises present section 302(b)(2), which requires Federal Register publication of the entire text of a section 301 petition under initiation of a formal investigation. The amendment would require only that a summary of the petition be published. Publication of entire petitions have become extremely costly and publication of a summary will lead to considerable savings. In order to provide adequate notice and information to interested parties, however, section 4(f) of the bill amends section 141 of the Trade Act to require USTR to make copies of all documents available to interested parties at cost.

Second, subsection (b) amends the maximum time limit under section 302 for reviewing petitions and determining whether to initiate an investigation with respect to cases involving a trade agreement. Under present law, USTR is required within 45 days in all cases to review the allegations in a petition filed under section 302(a) and issue a determination whether or not to initiate an investigation. On the very same day an affirmative determination is made, the USTR must request consultations with the foreign country concerned in all cases. The bill would retain this 45-day time limit for all cases not involving trade agreements.

In cases which do involve allegations of trade agreement violations, however, the bill would allow a total of 75 days before a determination of whether to initiate must be made, subject to further extension if agreed to by the petitioner. The first 15 days of this 75-day period would be for the specific purpose of review by USTR of petitions for "legal sufficiency" in order to determine whether the petition alleges a proper cause of action under section 301. The remaining 60 days would be for USTR and interagency fact-finding and policy review, including public hearings if necessary.

The main purpose of providing a 75-day rather than the current 45-day review period for cases involving trade agreements is to allow more adequate time for full development of facts and legal arguments, as well as more thorough consideration of policy questions, before a full-scale investigation and presentation to the foreign government are begun. As provided in section 303 of existing law, if the case involves a trade agreement and a resolution of the problem is not reached during consultations, the USTR must promptly request international dispute settlement proceedings

within the GATT. In some cases the United States has been forced by the 45-day time limit to initiate action without an adequate basis for the international proceedings. Given the legal and economic complexities of many section 301 disputes and the enormous volume of data (including foreign trade data) normally required to support them, the Committee believes there should be more adequate time to develop factual and legal information before international proceedings begin. The additional 30 days would permit the USTR to hold a public hearing for a full airing of factual and legal points prior to, rather than after, a determination on initiation in all cases, rather than only at the request of the petitioner.

Third, subsection (b) amends section 302 to provide the USTR explicit authority to self-initiate investigations under section 301. A determination by USTR to self-initiate is to be treated as if it were an affirmative determination on a petition under section 302(c)(2); hence self-initiation by USTR would lead to full investigation as contemplated for privately filed cases.

The purpose of allowing self-initiation is to encourage action by USTR whenever that office has information suggesting that a section 301 proceeding is warranted. In some cases U.S. exporters decide not to file petitions for legitimate reasons, such as the lack of information or the risk of foreign retaliation. While the statute does presently authorize the President to take section 301 actions on his own motion, there is no express authority for USTR to initiate and conduct investigations in order to develop a record sufficient for Presidential action. The bill would remedy this inconsistency. It is anticipated that USTR-initiated cases would result from careful study and draw heavily upon the inventory and assessment of trade barriers required under section 3 of this bill. The amendment also requires consultation with appropriate advisory committees established under section 135 of the Trade Act of 1974 in order to assure careful selection of suitable cases with the advice and input of the private sector.

Section 4(c) amends the time limits for recommendations by USTR to the President on what action, if any, he should take under section 301 upon completion of investigations. Under section 304 of current law, such recommendations must be made within different time limits depending upon the type of allegations involved and linked to specific periods of time, if any, provided for dispute settlement under individual trade agreements. These limits are: 7 months after initiation in cases involving export subsidies covered by the GATT subsidies agreement; 8 months in cases involving domestic subsidies under the same code; 30 days after the conclusion of dispute settlement in cases involving other agreements approved in the Multilateral Trade Negotiations (MTN) or involving the GATT itself; and 12 months after initiation in all other non-trade agreement cases. The amendment would simplify these time limits by substituting a 9-month time limit for recommendations in all cases not involving trade agreements (e.g., services, non-GATT signatories) and 8 months in all cases that do involve trade agreements, unless the petitioner agrees to an extension of that period.

The purpose of revising time limits under section 304 is to make the timing of recommendations to the President more predictable, certain, and uniform. Because dispute settlement rules under the GATT itself and the majority of MTN agreements do not have strict time limits, dispute settlement procedures other than those under the subsidies agreement are indefinite in duration. While the Committee recognizes that participation in dispute settlement is required by U.S. obligations under these agreements, the Congress should not permit interminable delays simply to accommodate the lack of discipline under code rules. A general rule requiring recommendations to the President within 8 months in cases involving trade agreements would allow participation in GATT settlement without unreasonable delay in domestic procedures. Cases falling under the MTN subsidies agreement are somewhat different, because that agreement does establish time limits for dispute resolution. However, in many of those disputes delays are also encountered, and in some cases the strict 7- or 8-month limit is too short. A limit of 8 months, with provision for additional time if the petitioner agrees, should give a reasonable period of time for making recommendations under domestic procedures while also permitting formal dispute settlement. Finally, the 12-month period for cases not covered by trade agreements, such as those involving services and investment, can easily be reduced to 9 months, because these cases do not require participation in any formal dispute settlement process. Nine months should be a sufficient period to allow full adjudication and bilateral negotiations with the offending foreign country.

Section 4(d) amends section 305 of the Trade Act by adding a new subsection (c) dealing with treatment of confidential business information. Many U.S. firms or groups are reluctant to file petitions under section 301 because they are concerned about providing the government with confidential information that they might later be forced to disclose. The bill would create a specific exemption from the Freedom of Information Act for information submitted to the USTR in aid of any investigation under section 301 if (1) the provider certifies that the information is business confidential, disclosure would endanger trade secrets or profitability, and it is not generally available; (2) the USTR determines the certification is well-founded; and (3) the provider supplies an adequate nonconfidential summary to the extent USTR requires by regulation. The amendment would, however, allow USTR to make such information available in a form which does not identify its supplier or to other government agencies in connection with section 301 proceedings. The Committee believes that this protection of confidential information will facilitate and encourage the filing of meritorious petitions.

Sections 4 (e) and (f) contain provisions regarding notice and report of extensions and other conforming changes. Section 4(e) amends section 306 to require Federal Register notice of each extension of time limits agreed to by a petitioner under amended sections 302 and 304, and to require an explanation of each such extension in the semiannual report presently submitted to Congress on section 301 actions. These changes merely assure adequate notice and explanation of all delays in investigations. Section 4(f)

makes necessary conforming amendments in section 141 of the Trade Act, which pertains to the organization, function, and powers of the U.S. Trade Representative. The amendment permits USTR to provide, where authorized by law, copies of documents to persons at cost. Funds received in this manner would be credited to the account from which the costs were incurred.

#### SECTION 5. NEGOTIATING OBJECTIVES

Section 5 of H.R. 1571 sets forth negotiating objectives on which the Committee believes attention should be focused toward achieving further trade liberalization. While particular emphasis is placed on services, investment, and high technology products, the Committee expects the President to seek negotiations under existing authority with respect to nontariff barriers and under the tariff authority provided under section 7 of this bill to reduce trade restrictions in other areas identified in the reports required under section 3 and in product sectors such as wine and other alcoholic beverages.

##### *Congressional mandate*

Section 5(a) contains a sense of the Congress that the United States should seek negotiations and consultations with foreign governments to eliminate policies and practices identified as barriers to U.S. exports. The United States should also seek agreement of the contracting parties to the GATT (1) to review the adequacy of the trade agreements concluded in the Tokyo Round of Multilateral Trade Negotiations with a view to expanding and strengthening their disciplines and coverage and ensuring their full implementation, (2) to complete the negotiation of agreements not concluded in the MTN, and (3) to conduct a meaningful work program of identifying and analyzing trading conditions in areas not currently limited to restrictions on trade in services, trade-distorting investment restrictions, and barriers to trade in high technology products. The work program should be conducted with a view to developing agreements to revise, extend, or supplement existing GATT rules to cover these areas.

Section 5(b) requires the USTR to keep the House Committee on Ways and Means and the Senate Committee on Finance currently informed with respect to trade policy priorities for expanding market opportunities and other matters referred to in subsection (a).

The Committee believes it essential to expand the coverage of the multilateral trading rules and to strengthen the dispute settlement process under the GATT, and is very concerned about the apparent absence of support from most other GATT member countries for a meaningful work program. The mandate is intended to demonstrate Congressional support for continued U.S. efforts in this direction as a far preferable alternative to growing sentiment for unilateral measures.

*Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products*

Section 5(c) would amend Chapter 1 of title I of the Trade Act of 1974 by adding a new section 104A establishing principal negotiating objectives of the United States under section 102 of the Trade Act with respect to trade in services, foreign direct investment, and high technology products. Section 102 authorizes the President until January 3, 1988, to enter into trade agreements to harmonize, reduce, or eliminate foreign barriers or other trade distortions, subject to expedited Congressional approval and implementation procedures.

New section 104A(a) sets forth two principal U.S. negotiating objectives with respect to trade in services. The first objective is to reduce or eliminate barriers to, or other distortions of, international trade in services, including but not limited to, denial of national treatment and restrictions on the operation of enterprises in foreign markets (including restrictions on transborder information flows and on the use of data processing facilities). The second objective is to develop internationally agreed rules, including dispute settlement procedures, to reduce or eliminate trade barriers or restrictions and help ensure open international trade in services.

New section 104A(b) sets forth two principal U.S. negotiating objectives with respect to foreign direct investment with implications for trade in goods or services. The first objective is to reduce or eliminate barriers to such investment, to expand the principle of national treatment, and to reduce or eliminate trade-related barriers to establishment in foreign markets, including establishment of services. The second objective is to develop internationally agreed rules, including dispute settlement procedures, to help ensure a free flow of such investment, and to reduce or eliminate trade-distortive effects of certain investment-related measures.

New section 104A(c) sets forth five principal U.S. negotiating objectives with respect to trade in high technology products. The first objective is to obtain and preserve the maximum openness of international trade and investment in high technology products and related services.

A second objective is to reduce or eliminate all barriers to, and the trade-distorting effects of, foreign government acts, policies, or practices on U.S. exports of high technology products and related services. Alternatively, if reduction or elimination is not achievable, the objective is to obtain compensation for such effects. Particular consideration in these efforts should be given to the nature and extent of foreign government intervention affecting U.S. high technology exports or investment, including (1) foreign industrial policies which distort international trade or investment, (2) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries, and (3) measures which encourage or facilitate anticompetitive market practices or structures.

It is not the Committee's intent that the compensation provision be interpreted to require U.S. retaliatory action if foreign barriers are not removed. If direct liberalization cannot be obtained, then compensation in other forms of market access should be sought,

such as those contained in the U.S.-Japan Nippon Telephone and Telegraph procurement agreement, for example. It is not the Committee's intent to confer authority under this provision for U.S. countermeasures on import such as orderly marketing agreements, voluntary export restraints, or the formation of industrial cartels.

A third U.S. objective is to obtain commitments that foreign countries will not discourage government or private procurement of foreign high technology products or related services. A fourth objective is to obtain commitments to foster joint scientific cooperation (e.g., financial participation and technical and personal exchanges), and to ensure unimpaired access by all participants to the results of any such cooperative efforts. The fifth principal negotiating objective is to provide effective safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

Section 5 also contains conforming amendments to the Trade Act of 1974, including an amendment of section 102(g) to add U.S. foreign direct investment with implications for trade in goods or services to the definition of "international trade" for purposes of the coverage of trade agreement authority under section 102.

#### SECTION 6. PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES

Section 6 of H.R. 1571 contains various provisions relating to trade in services with respect to the coordination of U.S. policies, establishment of a services industries development program, and coordination with State governments.

Section 6(a) provides for development and coordination of U.S. policies regarding trade in services by the USTR with other Federal agencies through the existing interagency trade organization. Further, each Federal department or agency responsible for the regulation of any service sector industry shall advise and work with the USTR regarding matters that have come to their attention with respect to the treatment of U.S. service industries in foreign markets or allegations of foreign unfair trade practices on services. The Department of Commerce, and other appropriate agencies are to provide staff support for negotiations and domestic implementation of service-related agreements.

This subsection would not in any way affect any existing authority or responsibility of any department or agency with respect to any service sector.

Section 6(b) directs the Secretary of Commerce to establish a services industries development program designed to promote (1) the competitiveness of U.S. service firms and employees through appropriate economic policies, and (2) the use and sale of U.S. services abroad and development of trade opportunities for U.S. service firms.

The program is to contain the following elements: (1) a data base including information such as export and import data on individual service industries; (2) collection and analysis of information on the international operations and competitiveness of U.S. service industries, including regulation of service industries, tax treatment of services, treatment of services in international agreements, and the

adequacy of current U.S. services policies and activities; (3) studies of individual domestic service industries; (4) collection of comparative international information on service industries and foreign government policies on services; (5) research and analysis of service-related issues and programs, including forecasts and industrial strategies; and (6) development of policies to strengthen the export competitiveness of service industries. The program is to be carried out from funds otherwise made available to the Secretary.

Section 6(c) establishes policy and mechanisms for coordination between the Federal Government and the States and U.S. service industries on matters involving services trade. Paragraph (1) of subsection (c) states as Congressional policy that the President shall consult with State governments on issues of trade policy which affect regulatory authority of non-Federal governments or their procurement of goods and services. Such consultations would include negotiating objectives and implementation of trade agreements, which is particularly important since such agreements could affect domestic laws and regulations within the purview of the States in certain service sectors. Further, the President shall establish intergovernmental trade policy advisory committees as principal fora for consultations between the Federal Government and State and local governments on these matters. The President shall also provide State and local governments and U.S. services industries, upon their request, information, data, analyses, advice, and assistance regarding U.S. policies on international trade in services.

Paragraph (2) of subsection (c) amends section 135(c) of the Trade Act of 1974 to authorize the President to establish policy advisory committees representing non-Federal Governmental interests to provide policy advice where he finds it necessary on matters referred to in section 6(a) and with respect to implementation of trade agreements.

#### SECTION 7. LIMITED NEGOTIATING AUTHORITY

The Committee amended H.R. 1571 as introduced to include section 7, which provides limited, three-year trade agreement authority to the President to reduce, continue, or increase U.S. duties, subject to Congressional expedited approval and implementation. Under sections 7 (a) and (d), the President may enter into trade agreements, only during the three-year period following date of enactment, providing for the modification or continuation of any existing duty, continuation of existing duty-free treatment, or such additional duties as he determines to be required or appropriate to carry out the agreements. The President may exercise this authority whenever (1) he determines any existing duty or other import restriction of a foreign country or the United States is unduly burdening and restricting U.S. trade and the purposes of H.R. 1571 will be promoted; or (2) any action has been taken, other than under section 203 of the Trade Act, to increase or impose any duty or other import restriction that requires the granting of new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions.

As provided under section 7(b), trade agreements entered into under this authority in any one-year period cannot provide for duty reductions or continuation of duty-free treatment on articles accounting for more than two percent of the value of U.S. imports during the most recent 12-month period.

Section 7(c) prohibits this authority from being exercised with respect to articles which the President designates as "import sensitive." In addition, negotiations are subject to the prerequisites of chapter 3 of Title I of the Trade Act of 1974, including advice from the International Trade Commission on the probable economic effects of changes in duty on domestic industries and consumers, public hearings, advice from advisory committees representing private sector interests involved, and advice from Departments and other sources.

Finally, section 7(e) makes entry into force of any trade agreement entered into under this authority subject to approval of implementing legislation under the Congressional expedited procedures of sections 102 (d) and (e) and 151 of the Trade Act. These special procedures for approving and implementing trade agreements in domestic law require 90-day advance notice by the President to the Congress of his intention to enter into a trade agreement and transmittal of the agreement, a draft implementing bill, a statement of any administrative action proposed, an explanation of how existing law is changed or affected, and a statement of how the agreement serves U.S. commercial interests and why the bill and action is required or appropriate. The Committees of jurisdiction are subject to automatic discharge if the implementing bill has not been reported within 45 days after its introduction. A vote on final passage must take place within 15 days thereafter. The bill cannot be amended after its introduction.

At the present time, the President does not have authority to enter into trade agreements providing for modifications in U.S. rates of duty. Limited residual tariff authority under section 124 of the Trade Act of 1974 expired on January 3, 1982. The Committee believes that provision of tariff authority is necessary to enable the President to obtain reductions in foreign tariff or nontariff barriers which restrict U.S. exports and to reduce disparities resulting from foreign tariffs higher than U.S. tariffs on the same product. This authority would also be an appropriate tool to carry out negotiations mandated under section 854(c) of the Trade Agreements Act of 1979 to obtain reduction or elimination of foreign barriers to U.S. exports of wine and other alcoholic beverages, and to achieve further reciprocal tariff liberalization on semiconductors and other high technology products. Numerous requests have also been received by the USTR and by Members of Congress from the private sector to reduce foreign and U.S. tariffs on other products. It is not the Committee's intention, however, that section 7 be used as tariff authority required to implement the Harmonized System of Customs Classification if the United States adopts that system.

The authority would also permit the United States to compensate through new duty concessions foreign countries adversely affected by increases in U.S. duties resulting from legislative or other action. At the present time, the President has authority under section 123 of the Trade Act to enter into compensation agreements

only with respect to import relief actions under section 203 of that Act. The authority provided by section 7 to make corresponding or offsetting tariff concessions as compensation applies only to other circumstances in which foreign countries shown to be adversely affected by increases in or imposition of U.S. duties or other import restrictions have the right under GATT to restore the balance of concessions by increasing or imposing equivalent restrictions on U.S. exports.

Section 7 addresses the concerns of certain domestic industries and labor that the authority not be utilized to reduce or eliminate U.S. tariff protection on products which are already sensitive to import competition. This determination by the President would be based on advice and hearing testimony. The hearing and advice requirements ensure full and continual participation and input by the private sector in determining negotiating objectives and the specific products which may be subject to trade agreements. As was the case with the residual tariff negotiating authority under section 124 of the Trade Act, the coverage of trade agreements which may be entered into any one year is limited in scope to no more than two percent of the total value of U.S. imports. Most importantly, approval and implementation of any changes in U.S. tariff treatment under this authority would be subject to Congressional approval. The Committee expects close and continuous consultation with the USTR as required under sections 102(c) and 161 of the Trade Act prior to the President's entry into any trade agreements as well as during the development and consideration of implementing legislation.

#### VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 1571 was ordered favorably reported by the Committee by voice vote with amendments.

#### OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee has concluded, from its review of existing trade law and efforts to reduce foreign trade barriers and from views received in hearings and written comments, that H.R. 1571 is necessary to strengthen and improve the tools for dealing with foreign trade restrictions and to encourage further negotiations for trade liberalization.

With respect to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in this bill.

BUDGET AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF  
CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 1571 does not provide new budget authority or any new or increased tax expenditures. With respect to the cost estimates provided by the Congressional Budget Office, the Committee states that the cost estimates for section 7 of the bill represent maximum losses of customs revenue that would result only if the President exercises the tariff authority to the maximum extent by eliminating existing rates of duty on two percent of the total value of U.S. imports in each of the three years for which authority is granted. Previous experience with trade agreements demonstrates that such an outcome is highly unlikely. Further, section 7 prohibits any change in existing duty treatment on import sensitive products as determined by the President. Since existing rates of duty are generally relatively high on such articles, duties collected and potential revenue losses on products which might be subject to trade agreements are likely to be lower. Finally, the cost estimates does not take into account potential increases in revenues that would be generated by reciprocal foreign trade concessions, as well as any increases in U.S. tariffs authorized by section 7. It should also be noted that the Congress must approve and implement any trade agreements involving changes in U.S. tariffs resulting in revenue losses.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., September 22, 1983.*

HON. DAN ROSTENKOWSKI,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 1571, the Reciprocal Trade and Investment Act of 1983, as ordered reported by the Committee on Ways and Means, September 20, 1983. The bill amends the Trade Act of 1974 to clarify the scope of Presidential authority to enforce U.S. rights under trade agreements and to respond to certain unfair foreign trade practices. It also specifies principal negotiating objectives to be used in achieving further trade expansion.

The major potential budget impact of the bill results from Section 7 which grants limited trade agreement negotiating authority to the President for three years. Subject to certain limitations and expedited congressional approval, the President would have authority to reduce, continue, or increase U.S. duties on imports while negotiating trade agreements with other countries.

CBO has examined and concurs with estimates prepared by the International Trade Commission of the maximum revenue loss possible under this provision. The estimates assume that the President exercises his authority to eliminate duties to the maximum extent possible each year and that no duties are increased. Given these assumptions, Section 7 could reduce federal fiscal year revenues by up to the following amounts:

[By fiscal years, in millions of dollars]

|                                            | 1984 | 1985 | 1986 | 1987 | 1988 |
|--------------------------------------------|------|------|------|------|------|
| Maximum revenue loss due to H.R. 1571..... | 86   | 378  | 624  | 686  | 755  |

H.R. 1571 also requires the U.S. Trade Representative (USTR) to submit an annual report on trade barriers to the House Committee on Ways and Means and the Senate Committee on Finance, including an inventory of foreign barriers to U.S. goods or services, and an assessment of the principal foreign policies or practices identified in the inventory that restrict market access for U.S. commerce. Within 12 months of the bill's enactment, the USTR would be required to submit to the Congress a report which addresses factors affecting the competitiveness of high technology industries with potential for high sales growth in world markets. The USTR staff anticipates that the President's 1984 budget request of \$11.6 million for the office is sufficient to include the costs of completing the studies. The bill contains other provisions related to USTR and coordination with other agencies that largely formalize existing duties and are expected to result in no additional cost. To date, no funds have been authorized or appropriated for the office of the U.S. Trade Representative for fiscal year 1984.

H.R. 1571 would establish a service industries development program within the Department of Commerce (DOC). The DOC would be required to conduct studies and develop policies designed to increase the competitiveness of U.S. service industries. The DOC would also have authority to collect and analyze industry data and develop a data base. According to DOC, approximately \$1-\$2 million annually over the next three to five years would be required to implement these provisions. Initially the emphasis would be on conceptualizing and developing a data base, since little information about this area currently exists. Over time, the emphasis would shift towards maintaining the data base. H.R. 1571 specifies that the Secretary of Commerce should carry out these activities using funds otherwise made available to DOC, and provides no authorization of appropriations for this purpose.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

#### INFLATIONARY IMPACT STATEMENT

With respect to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 1571 would not have an inflationary impact on prices and costs in the operation of the national economy.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## TRADE ACT OF 1974

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## TITLE I—NEGOTIATING AND OTHER AUTHORITY

### CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

\* \* \* \* \*

#### SEC. 102. NONTARIFF BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

(a) \* \* \*

\* \* \* \* \*

(d) Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, *or a trade agreement entered into under section 7(a) of the Reciprocal Trade and Investment Act of 1983*, he shall submit such agreement, together with a draft of an implementing bill (described in section

151(b)) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e), and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) are complied with and the implementing bill submitted by the President is enacted into law.

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) For purposes of this section—

(1) the term "barrier" includes the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate;

(2) the term "distortion" includes a subsidy; and

[(3) the term "international trade" includes trade in both goods and services.]

(3) The term "international trade" includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

\* \* \* \* \*

#### SEC. 104. SECTOR NEGOTIATING OBJECTIVE.

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) For the purposes of this section and section 135, the Special Representative for Trade Negotiations together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 135 and after consultation with interested private or non-Federal governmental organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 101 or 102, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) is achieved by such agreement in each product sector or product sectors.

#### SEC. 104A. NEGOTIATING OBJECTIVES WITH RESPECT TO TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.

(a) *TRADE IN SERVICES.*—Principal United States negotiating objectives under section 102 with respect to trade in services shall be—

(1) to reduce or to eliminate barriers to, or other distortions of, international trade in services including, but not limited to—

(A) barriers that deny national treatment, and

(B) restrictions on the operation of enterprises in foreign markets, including—

(i) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(ii) restrictions on the use of data processing facilities within or outside of such country or instrumentality; and

(2) to develop internationally agreed rules, including dispute settlement procedures, which will reduce or eliminate such barriers or distortions and help insure open international trade in services.

(b) **FOREIGN DIRECT INVESTMENT.**—Principal United States negotiating objectives under section 102 with respect to foreign direct investment with implications for trade in goods or services shall be—

(1) to reduce or to eliminate barriers to such foreign direct investment, to expand the principal of national treatment, and to reduce or to eliminate trade-related barriers to establishment in foreign markets, including establishment of services; and

(2) to develop internationally agreed rules, including dispute settlement procedures, which

(A) will help insure a free flow of such foreign direct investment, and

(B) will reduce or eliminate the trade distortive effects of certain investment related measures.

(c) **HIGH TECHNOLOGY PRODUCTS.**—Principal United States negotiating objectives under section 102 with respect to high technology products shall be—

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to reduce or to eliminate all barriers to, and the trade-distorting effects of, foreign government acts, policies, or practices on, United States exports of high technology products and related services, or if such reduction or elimination is not achievable, to obtain compensation for such effects, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries including—

(A) foreign industrial policies which distort international trade or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries; and

(C) measures which facilitate or encourage anticompetitive market practices or structures;

(3) to obtain commitments that foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the United States and those of the trading partners of the United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) insure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(5) to provide effective safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

\* \* \* \* \*

## CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

### SEC. 135. ADVICE FROM PRIVATE OR PUBLIC SECTOR.

(a) The President shall seek information and advice from representative elements of the private sector *and the non-Federal governmental sector* with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 101 or 102, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the administration of the trade policy of the United States.

(c)(1) The President may, on his own initiative, or at the request of organizations representing industry, labor, agriculture, or services, establish general policy advisory committees for industry, labor, agriculture, or services, respectively, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, and service interests, respectively, including small business, interests, and shall be organized by the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor, or Agriculture, as appropriate.

#### (3) *The President—*

(A) *may establish policy advisory committees representing non-Federal governmental interests to provide, where the President finds it necessary, policy advice—*

(i) *on matters referred to in subsection (a), and*

(ii) *with respect to implementation of trade agreements, and*

(B) *shall include as members of committees established under paragraph (1) representatives of non-Federal governmental interests where he finds such inclusion appropriate after consultation by the Trade Representative with such representatives.*

(g)(1)(A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private or non-Federal government sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(i) officers and employees of the United States designated by the Special Representative for Trade Negotiations, and

(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 161 (a) or are designated by the chairman of either such committee under section 161(b)(2), and members of the staff of either such committee designated by the chairman under section 161(b)(2),

for use in connection with negotiation of matters referred to in subsection (a).

(B) information, other than that described in paragraph (A), and advice submitted in confidence by the private or non-Federal government sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), shall not be disclosed to any person other than—

- (i) the individuals described in subparagraph (A), and
- (ii) the appropriate advisory committees established under this section.

(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

\* \* \* \* \*

(j) In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and if such information is submitted under the provisions of subsection (g), confidential basis by private or non-Federal government organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiation of any matters referred to in subsection (a).

\* \* \* \* \*

(m) *NON-FEDERAL GOVERNMENT DEFINED.*—The term “non-Federal government” means—

- (1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or
- (2) any agency or instrumentality of any entity described in paragraph (1).

## CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) \* \* \*

\* \* \* \* \*

(d) The United States Trade Representative may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS-18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employee travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers, and duties vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(7) adopt an official seal, which shall be judicially noticed;

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of title 5, United States Code (relating to rates of per diem allowances in lieu of subsistence expenses);

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office; [and]

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding \$9,500[.]; and

(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be cred-

*ited to, and be available for use from, the account from which expenditures relating thereto were made.*

\* \* \* \* \*

## CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

### SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section and sections 152 and 153 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing revenue bills described in subsection (b)(2), approval resolutions described in subsection (b)(3), and resolutions described in subsections 152(a) and 153(a); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) DEFINITIONS.—For purposes of this section—

(1) The term “implementing bill” means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements *entered into under section 102 of this Act or section 7(a) of the Reciprocal Trade and Investment Act of 1983* and submitted to the House of Representatives and the Senate under section 102 and which contains—

(A) a provision approving such trade agreement or agreements,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

\* \* \* \* \*

## CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS

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**[SEC. 163. REPORTS.] SEC. 163. REPORTS ON TRADE AGREEMENTS AND ADJUSTMENT ASSISTANCE.**

(a) \* \* \*

\* \* \* \* \*

**SEC. 164. REPORT CONCERNING BARRIERS TO UNITED STATES EXPORTS.**

(a) Before the close of the 12-month period beginning on the date of enactment of this section, the United States Trade Representative (hereinafter in this section referred to as the "Trade Representative") shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on trade barriers to United States exports. The report, which the Trade Representative shall annually revise and update after it is submitted in accordance with the preceding sentence, shall contain—

(1) a comprehensive inventory of acts, policies, or practices, which constitute barriers to, or distortions of, United States exports of goods or services, or of foreign direct investment by United States persons with implications for trade in goods or services, and such inventory shall include, but not be limited to—

(A) a description of each act, policy, or practice and of its operation in the particular country,

(B) an identification of the goods, services, or investment affected, and

(C) the legal basis for such act, policy, or practice in the particular country; and

(2) a quantitative or qualitative assessment, whichever is appropriate, of the principal acts, policies, or practices identified in paragraph (1) that restrict market access for competitive United States exports of goods or services, or foreign direct investment with implications for trade in goods or services, and such assessment shall include, but not be limited to—

(A) the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party,

(B) information with respect to any action taken to eliminate or to reduce each such act, policy, or practice, including, but not limited to—

(i) any action under section 301, or

(ii) negotiations or consultations with foreign governments, and

(C) any applicable advice given through appropriate committees established pursuant to section 135.

(b) The report and the revisions and updatings thereto required under subsection (a) shall be developed and coordinated by the Trade Representative through the interagency trade organization established by section 242(a) of the Trade Expansion Act of 1962.

(c) The head of each department or agency of the executive branch of the Government, including any independent agency—

(1) shall furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section; and

(2) may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out such functions.

(d) Nothing in this section shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

\* \* \* \* \*

## TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

### CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

#### SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) DETERMINATIONS REQUIRING ACTION.—If the President determines that action by the United States is appropriate—

(1) to enforce the rights of the United States under any trade agreement; or

(2) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. [Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.]

(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and

(2) impose duties or other import restrictions on the [products] goods of, and fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.

(c) CONDITIONS AND LIMITATIONS.—In implementing this section, the President—

(1) may take action on a nondiscriminatory basis or solely against the foreign country or instrumentality involved;

(2) may take action without regard to whether or not the action is related to the subject matter involved in the act, policy, or practice identified under subsection (a);

(3) shall take into account the obligations of the United States under any applicable trade agreement;

(4) shall take into account the impact of the action taken on the national economy, including, but not limited to, employment, inflation, industry rationalization, and consumer costs;

(5) shall conduct a review (on not less than a biennial basis) of each action taken by him under this section in order to determine its effectiveness and whether continuation of the action is in the national interest; and

(6) shall rescind an action taken under this section within thirty days after the day on which—

(A) the offending act, policy, or practice is eliminated by the foreign country or instrumentality, or

(B) a determination is made under paragraph (5) that continuation of the action is not in the national interest.

**(d) ACTIONS ON SERVICES.—**

(1) **IN GENERAL.**—With respect to actions on the services of a foreign country under subsection (b), the President may restrict, in the manner and to the extent he deems appropriate, the terms and conditions, or deny the issuance, of any license, permit, order to other authorization, issued under the authority of Federal law, that allows a foreign supplier of services access to the United States market in the service sector concerned.

(2) **AFFECTED AUTHORIZATIONS.**—Actions under paragraph (1) shall apply only with respect to licenses, permits, orders, or other authorizations granted, or applications therefor pending, on or after the date a petition is filed under section 302(a) or a determination to initiate is made by the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative") under section 302(c).

(3) **CONSULTATION.**—Before the President takes action under subsection (b) involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult with the head of the agency concerned.

**[(c) PRESIDENTIAL PROCEDURES.—]**

**(e) OTHER ACTIONS.—**

(1) **ACTION ON OWN MOTION.**—If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination, in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) **ACTION REQUESTED BY PETITION.**—Not later than 21 days after the date on which he receives the recommendation of the Special Representative under section 304 [with respect to a petition], the President shall determine what action, if any, he will take under this section, and shall publish notice of his de-

termination, including the reasons for the determination, in the Federal Register.

**[(d)] (f) SPECIAL PROVISIONS.—**

**[(1) DEFINITION OF COMMERCE.—**For purposes of this section, the term “commerce” includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products.]

*(1) DEFINITIONS.—For purposes of this section—*

*(A) The term “commerce” includes, but is not limited to—*

*(i) goods and services; and*

*(ii) foreign direct investment by United States persons with implications for trade in goods or services.*

*(B) The term “services” includes services associated with international trade, whether or not such services are related to trade in goods.*

*(C) The term “discriminatory” includes, if appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.*

*(D) The term “unjustifiable” means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States, and includes any such act which denies the protection of intellectual property rights.*

**(2) VESSEL CONSTRUCTION SUBSIDIES.—**An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

**SEC. 302. PETITIONS FOR PRESIDENTIAL ACTION.**

**(a) FILING OF PETITION WITH SPECIAL REPRESENTATIVE.—**Any interested person may file a petition with the Special Representative for Trade Negotiations (hereinafter in this chapter referred to as the “Special Representative” requesting the President to take action under section 301 and setting forth the allegations in support of the request. [The Special Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate and investigation.]

**(b) REVIEW OF PETITIONS.—**

**(1) PETITIONS NOT INVOLVING TRADE AGREEMENTS.—***Not later than forty-five days after the date on which he receives a petition under subsection (a) that does not involve a trade agreement, the Trade Representative shall determine whether to initiate an investigation.*

**(2) PETITIONS INVOLVING TRADE AGREEMENTS.—***With respect to a petition received under subsection (a) that involves a trade agreement, the Trade Representative shall—*

(A) not later than fifteen days after the date on which he receives the petition, review the petition for legal sufficiency; and

(B) not later than seventy-five days after such date of receipt (unless the petitioner agrees to an extension of such seventy-five-day period), and based on such factfinding, policy review, and public hearings as he deems necessary, determine whether to initiate an investigation.

**[(b)] (c) DETERMINATIONS REGARDING PETITIONS.—**

(1) **NEGATIVE DETERMINATION.**—If the Special Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) **AFFIRMATIVE DETERMINATION.**—If the Special Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Special Representative shall publish **[the text]** a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a **[public hearing—]** public hearing (unless a public hearing was held on the petition under subsection (b)(2)(B))—

(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner), if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefore is made by the petitioner.

**(d) DETERMINATION TO INITIATE BY MOTION OF TRADE REPRESENTATIVE.**—If the Trade Representative determines with respect to any matter that an investigation should be initiated in order to advise the President concerning the exercise of the President's authority under section 301, the Trade Representative shall publish such determination in the Federal Register and such determination shall be treated as an affirmative determination under subsection (c)(2). The Trade Representative shall before making any determination under this subsection consult with appropriate committees established pursuant to section 135.

**SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.**

On the date an affirmative determination is made under section **[302(b) with respect to a petition,]** 302 stage 302(c), the special Representative on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition or the determination of the Trade Representative under section 302(d). If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Special Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Special Representative shall seek information and advice from the petitioner (if any) and the appropriate **[private sector]** representatives provided for

under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

**SEC. 304. RECOMMENDATIONS BY THE SPECIAL REPRESENTATIVE.**

**(a) RECOMMENDATIONS.—**

**[(1) IN GENERAL.—**On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Special Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the issues raised in the petition. The Special Representative shall make that recommendation not later than—

**[(A)** 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the “Subsidies Agreement”);

**[(B)** 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

**[(C)** in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

**[(D)** 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).]

*(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Trade Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the matters subject to investigation. The Trade Representative shall make that recommendation not later than—*

*(A) nine months after the date of the initiation of the investigation under section 302(c)(2), if the petition does not involve a trade agreement; or*

*(B) eight months after the date of the initiation of the investigation under section 302(c)(2) (unless the petitioner agrees to an extension of such eight-month period), if the petition involves a trade agreement.*

*(2) SPECIAL RULE.—Any reference in this paragraph to another paragraph or subparagraph shall be considered to be in reference to a paragraph or subparagraph of this section as it was in effect on the day before the date of the enactment of the Reciprocal Trade and Investment Act of 1983. In the case of any petition—*

*(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and*

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Special Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) **REPORT IF SETTLEMENT DELAYED.**—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph [(1)(C)] (1)(B) (other than the Subsidies Agreement), the Special Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitation specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) **CONSULTATION BEFORE RECOMMENDATION.**—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section [302,] 302(a) or a determination to initiate under section 302(d), the Special Representative, unless he determines that expeditious action is required—

(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate [private sector] advisory representatives provided for under section 135; and

(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Special Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after

making the recommendation concerned to the President, comply with such paragraphs.

#### SEC. 305. REQUESTS FOR INFORMATION.

##### (a) IN GENERAL.—\* \* \*

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##### (c) CERTAIN BUSINESS INFORMATION NOT MADE AVAILABLE.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) *such information is business confidential,*

(ii) *the disclosure of such information would endanger trade secrets or profitability, and*

(iii) *such information is not generally available;*

(B) *the Trade Representative determines that such certification is well-founded; and*

(C) *to the extent required in regulations prescribed by the Trade Representatives, the person providing such information provides an adequate nonconfidential summary of such information.*

##### (2) USE OF INFORMATION.—*The Trade Representative may—*

(A) *use information subject to paragraph (1), or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter; or*

(B) *may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.*

#### SEC. 306. ADMINISTRATION.

The Special Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this chapter;

(2) *publish notice in the Federal Register of each extension agreed to by a petitioner under section 302(b)(2)(B) or 304(a)(1)(B);*

[(2)] (3) keep the petitioner regularly informed of all determinations and developments regarding his case under this section, including the reasons for any undue delays; and

[(3)] (4) submit a report to the House of Representatives and the Senate semiannually describing the petitions filed and the determinations made (and reasons therefor) under section 302, developments in and current status of each such proceeding, each extension, and the reasons therefor, for which notice

*is required to be published under paragraph (2), and the actions taken, or the reasons for no action, by the President under section 301.*

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